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**Olde Mill Industrial, Inc. and Sheet Metal Workers
International Association Local Union No. 33,
AFL-CIO. Case 8-CA-28176**

June 20, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

Pursuant to a charge and first amended charge filed on April 12 and 22, 1996, the General Counsel of the National Labor Relations Board issued a complaint on April 25, 1996, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and to furnish necessary and relevant information following the Union's certification in Case 8-RC-15252. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On May 21, 1996, the General Counsel filed a Motion for Summary Judgment. On May 23, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain and to furnish the requested information, but attacks the validity of the certification on the basis of the Board's unit determination in the representation proceeding and denies that the requested information, i.e., a copy of the summary plan description of the Employer's health care plan and a list of all employees' names, addresses, phone numbers, current wage rates, and any other benefits they may be receiving, is relevant and necessary to the Union's role as bargaining representative.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation pro-

ceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no issues warranting a hearing with respect to the information requested by the Union. It is well-established that such information is presumptively relevant and must be furnished on request. See, e.g., *Trustees of the Masonic Hall*, 261 NLRB 436 (1982); and *Mobay Chemical Corp.*, 233 NLRB 109 (1977). See also *Excel Fire Protection Co.*, 308 NLRB 241 (1992).

Accordingly, we grant the Motion for Summary Judgment and will order the Respondent to recognize and bargain with the Union and to furnish it the information requested.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, an Ohio corporation, with an office and place of business in Streetsboro, Ohio, has been engaged in the fabrication and installation of ducts and fixtures for heating and air-conditioning units and the installation and servicing of heating and air-conditioning equipment. Annually, in conducting its business operations, the Respondent purchases and receives at its Streetsboro, Ohio facility goods valued in excess of \$50,000 directly from points outside the State of Ohio. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held October 6, 1995, the Union was certified on April 2, 1996, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All employees employed by the Respondent who perform fabrication, installation, and servicing of sheet metal and heating, ventilation and air conditioning equipment, including working foremen, mechanics, and helpers in the installation department, all fabrication employees and the service technician, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act and all other employees.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

Since April 4, 1996, the Union has requested the Respondent to bargain and to furnish necessary and relevant information, and, since April 8, 1996, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

By refusing on and after April 8, 1996, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested necessary and relevant information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Olde Mill Industrial, Inc., Streetsboro, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Sheet Metal Workers International Association, Local Union No. 33, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All employees employed by the Respondent who perform fabrication, installation, and servicing of sheet metal and heating, ventilation and air conditioning equipment, including working foremen, mechanics, and helpers in the installation department, all fabrication employees and the service technician, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act and all other employees.

(b) Furnish the Union the information that it requested on April 4, 1996.

(c) Within 14 days after service by the Region, post at its facility in Streetsboro, Ohio, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 8 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 12, 1996.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 20, 1996

William B. Gould IV, Chairman

Margaret A. Browning, Member

Charles I. Cohen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Sheet Metal Workers International Association, Local Union No. 33, AFL-CIO as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All employees employed by us who perform fabrication, installation, and servicing of sheet metal and heating, ventilation and air conditioning equipment, including working foremen, mechanics, and helpers in the installation department, all fabrication employees and the service technician, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act and all other employees.

WE WILL, furnish the Union the information it requested on April 4, 1996.

OLDE MILL INDUSTRIAL, INC.